In the High Court of Punjab and Haryana at Chandigarh.

Civil Revision No.6136 of 2006.

Date of decision:20.11.2006.

Kaka Singh and others.

...Petitioners.

Versus

Gurmail Singh and others.

...Respondents.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.Vinod S. Bhardwaj Advocate for the petitioners.

...

Judgment.

S. N. Aggarwal, J.

Gurmail Singh respondent filed a civil suit against the petitioners seeking to restrain them from interfering in his peaceful possession over the land measuring 8 Kanals 4 Marlas.

The petitioners contested the suit on the plea that the Gurmail Singh alone was not in exclusive possession of the suit land. He was only in possession of 13 Marlas while the suit land was in their possession.

An application for interim stay was also filed by Gurmail Singh, respondent. It was contested by the petitioners. The said

application was dismissed by the learned trial Court vide order dated 24.3.2005.

Gurmail Singh respondent filed an appeal against the said order. The appeal was accepted by the learned Lower Appellate Court vide order dated 19.9.2006 and the petitioners were restrained from interfering into the peaceful possession of Gurmail Singh respondent and his brothers over the suit land during the pendency of civil suit.

Hence, the present petition.

The submission of learned counsel for the petitioners was that Gurmail Singh was not in exclusive possession of any part of suit land except 13 Marlas. Moreover, the petitioners were cultivating the suit land.

This submission has been considered. The learned Lower Appellate Court has observed in the order that as per revenue record, Roop Singh (father of Gurmail Singh) was in possession of suit land and after his death, Gurmail Singh respondent and his brothers are shown to be owners in possession of land measuring 8 Kanals 4 Marlas. In Khasra Girdawaries for the period from Kharif, 2001 to Kharif, 2004, Gurmail Singh and his brothers are shown in cultivating possession of the suit land as co-sharers.

On the other hand,the petitioners have not placed any document on the file to prove their possession over the suit land. Therefore, the learned Lower Appellate Court was justified in reversing the order passed by the learned trial Court and in granting interim stay

in favour of Gurmail Singh respondent vide order dated 19.9.2006.

Since Gurmail Singh respondent is shown to be owner in cultivating possession of the suit land as co-sharer, he has succeeded to make out a prima facie case. The petitioners, on the other hand, have not been able to produce any document on the file to show that they were in cultivating possession of the suit land. Therefore, there is no legal infirmity in the order passed by the learned Lower Appellate Court.

There is no merit in the present petition and the same is dismissed.

November 20,2006. (S. N. Aggarwal)
Jaggi Judge